

PUBLIC REVIEW DRAFT

| | | |
|----------|---|-----|
| 5.0 | CONSISTENCY WITH OTHER APPLICABLE LAWS | 331 |
| 5.1 | Halibut Act Requirements | 331 |
| 5.2 | National Standards | 331 |
| 5.3 | Section 303(a)(9) - Fisheries Impact Statement | 334 |
| 5.4 | Section 303(b)(6) - Limited Entry Requirements | 335 |
| 5.5 | Regulatory Flexibility Act | 336 |
| 5.5.1 | Introduction | 336 |
| 5.5.2 | Statement of Problem | 337 |
| 5.5.3 | Objective Statement of Proposed Action and its Legal Basis | 337 |
| 5.5.4 | Description of each Action (non-mutually exclusive alternatives) | 338 |
| 5.5.5 | Reasoning for, and focus of, an IRFA | 338 |
| 5.5.6 | Requirement to Prepare an IRFA | 338 |
| 5.5.7 | What is a Small Entity? | 339 |
| 5.5.8 | Description of the Businesses and Communities Affected by the Proposed Action(s) | 340 |
| 5.5.8.1 | Charter Fishery | 340 |
| 5.5.9 | Recordkeeping requirements | 345 |
| 5.5.10 | Potential Impacts of the Alternatives on Small Entities | 345 |
| 5.5.10.1 | Status quo | 345 |
| 5.5.10.2 | Set an allocation of halibut for the guided halibut fishery through an IFQ program | 345 |
| 5.5.10.3 | Implement a moratorium on new entry into the halibut charter fishery | 347 |
| 5.5.11 | Conclusion | 347 |
| 6.0 | References | 348 |
| 7.0 | Agencies and Individuals Consulted | 350 |
| 8.0 | Preparers | 350 |
| | APPENDIX I Brief Chronology of Charter Halibut Public Record | 351 |
| | APPENDIX II Characteristics of the commercial halibut IFQ Program | 355 |
| | APPENDIX III Description and Application of Available Data Sources | 363 |
| | APPENDIX IV Community “Set Aside” of Halibut Charter Individual Fishing Quota Shares Discussion Paper - May 30, 2000 | 369 |
| | APPENDIX V Impact on Anglers of the Proposed Halibut Charter IFQ System | 369 |

5.0 CONSISTENCY WITH OTHER APPLICABLE LAWS

5.1 Halibut Act Requirements

The North Pacific Halibut Act of 1982 governs the promulgation of regulations for managing the halibut fisheries, in both State and Federal waters. The language in the Halibut Act regarding the authorities of the Secretary of Commerce and the Regional Fishery Management Councils is excerpted below:

'The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the U.S. portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the U.S., or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in Section 303(b)(6) of the Magnuson Act. If it becomes necessary to allocate or assign halibut fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges...'

From the language in the Halibut Act, it is clear that while the jurisdictional authority for limited access and other allocational measures resides within the provisions of the Halibut Act, consideration of those types of measures is subject to many of the same criteria described under the Magnuson Act. In particular, the 303(b)(6) provisions of the Magnuson Act and the language from National Standard 4 are directly referenced. Therefore, the following sections are included to discuss the consistency of the proposed alternatives relative to certain provisions of the Magnuson Act and other applicable laws.

5.2 National Standards

Below are the 10 National Standards as contained in the Magnuson-Stevens Act (Act), and a brief discussion of the consistency of the proposed alternatives with those National Standards, where applicable.

National Standard 1 - Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery

None of the alternatives would inhibit the prevention of overfishing. Under an IFQ program the QS holders are responsible for limiting themselves to their allocation. Exceeding their allocation could result in enforcement actions that lead to the loss of halibut harvest privileges. On the other hand, persons that were excluded from the program or that received a small allocation may be tempted to try and circumvent the harvest regulations. NMFS and the Coast Guard would be responsible for ensuring that persons fishing illegally are identified stopped, so that overfishing is prevented.

Inclusion of the charter fishery into the existing halibut IFQ program, *which includes a strict allocation between the two sectors*, could result in foregone harvests of the halibut resource, relative to the status quo (guideline harvest level), if the charter fleet does not harvest the full amount of its allocation. This is because, under the status quo, the commercial fleet would have been allocated an amount of halibut resulting in full harvest of the overall quota. However, the amount of this potentially unharvested fish, under any alternative, would likely be minimal, representing less than 5% of the overall quota. This is similar to the amount which

currently goes unharvested under the commercial IFQ fishery, and the 'loss' of this fish to harvest may be more than offset by other management concerns, including considerations under National Standard 8.

National Standard 2 - Conservation and management measures shall be based upon the best scientific information available.

The IPHC will continue to be responsible for the conservation of the halibut resource. They will determine the biomass of the halibut resource using well established sampling techniques and set the halibut removals according to the results of their surveys and models.

While management information on the charter boat industry is less definitive than for most commercial fisheries management considerations, considerable effort and expense by state and federal agencies have been applied to analyses of the alternatives in this document. The results of the contract work by ISER in 1997 and university economists in 2001 (which are referenced in relevant sections of this analysis) comprise the most definitive information available on the composition and characteristics of the guided sport halibut fishery and IFQ transferability, respectively. In December 2000, the SSC noted that although it was not possible to conduct an in-depth review of four ADFG Sportfish Division publications on sport halibut fishery statistics and current operational plans for creel census data collection in areas 2C and 3A, the methodologies used appear sound and well-implemented.

National Standard 3- To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The Pacific halibut stock is considered by the IPHC to be a single stock in the North Pacific, though with significant migratory patterns and shifts in distribution, both within years and across years. However, it is managed by more discrete regulatory areas (Areas 3A and 2C for example) as is described in the analysis.

National Standard 4 - Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

None of the alternatives would allocate disproportionate fishing privileges - inclusion in the IFQ program would be based on past participation, regardless of residency. One exception to past participation is the community set aside program under Issue 11 whereby residents of 37 proposed communities would be eligible for an initial allocation between ½ to 2 ½ percent. Since only selected communities within Areas 2C and 3A would be included in the proposed program, it does not violate National Standard 4.

Concern has been raised that an allocation to charter operators may negatively impact the guided angler. The document notes that this program is unusual in that it proposes to allocate fishing privileges to guides and not the anglers that actually harvest the fish. Such an allocation may give guides more power in determining the types of trips offered and the price they charge for the trips. However, the logistics of allocating QS to guided anglers may be substantial.

The Council is considering use caps that would limit the total amount of halibut that a entity could use during a year. Use caps ranging from 0.25% to 1.0% of the combined commercial and charter CEY are under consideration. Setting the use caps at any of these levels should prevent entities from acquiring an excessive share of the use rights to the halibut resource.

National Standard 5 - Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

While economic allocation, between commercial and guided sport fisheries, is a consequence of the IFQ alternatives, various other considerations are identified and are considered in the analyses. Impacts on communities are one of those areas. The document states that economic efficiency may be reduced if allocations are made to the community set-aside program. However, other social goals of the program may off-set the losses in efficiency.

IFQ programs have been touted in many commercial fisheries as a means to improve efficiency. The structure of the guided sport fishery is much different from most commercial fisheries, however, there would likely be efficiency benefits to charter operators. These gains would result from their ability to better plan their fishing seasons, or if they are inefficient operators, to exit the fishery with some compensation.

National Standard 6 - Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The proposed alternatives are structured to, among other objectives, accomplish what is implied by National Standard 6. Under the existing management structure, any reductions in the overall halibut quota available are at the expense of the commercial fleet, because projected catch by the charter fleet is taken off the top prior to setting the commercial quotas. A direct allocation between the charter and the commercial fleets (recall the GHF is a target amount that may be exceeded) would provide a more equitable basis for distributing the quota when there are natural fluctuations in the biomass or other factors that impact halibut removals by guided anglers. However, because the demand for halibut in the charter sector comes from the guided angler, an allocation that is less than the demand from anglers would tend to increase the price of charters. If transfers between the two sectors were not allowed this could result in some anglers not being able to charter a trip where they could retain halibut at any price.

National Standard 7 - Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Imposing additional reporting requirements under an IFQ program would increase costs of management relative to the status quo. Reporting requirements would impose minimal costs to the fleet, but would create additional costs to the agency for compiling and processing the information from those reports. The initial allocation of charter QS would likely impose the greatest costs to management agencies, with additional staff being required to administer the applications and appeals process. Subsequent enforcement could impose additional costs to the agency. Such costs of including the charter sector into the existing halibut IFQ program may be marginal compared with administration of the overall IFQ program, and some of the costs would likely be recovered through fees charged to the holders of charter quota.

National Standard 8 - Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The alternatives within this analysis are specifically proposed to, among other things, deal with issues relating to minimizing adverse impacts on the communities. This is complicated by the fact that the charter fleet, in

most cases, is based in those same communities, and stability for the community as a whole is based on trade-offs between those two sectors within the community. An explicit division of the quotas, as well an allocation to communities for new entry into the charter fishery, has the potential to enhance overall community stability by defining the expectations of all users of the halibut resource. Overall economic activity within each community may be more of a trade-off between sectors, though one sector may contribute more economic activity per fish than the other.

Some members of the charter sector and guided angler representatives are concerned that charter quota will be concentrated in some of the larger ports after the initial allocation and trades. If this were to occur, we cannot say whether it would or would not, some of the smaller ports would be harmed by the implementation of a charter IFQ program. Information on the communities that are currently involved in the charter and commercial halibut fisheries can be found in Chapter 3 and the IRFA.

National Standard 9 -Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The mortality associated with charter caught fish would be assumed to be the same as the commercial fishery until further research is done on the types of gear used and other factors. Commercial halibut fisheries tend to use circle hooks which are thought to be less damaging to the halibut than “J” hooks. The charter fishery uses both circle and “J” hooks, but the proportion of “J” hook use is unknown. After the mortality rate for halibut taken by the charter industry is established, that rate could be applied to halibut released by the charter sector to better estimate total mortality. The actual rate may be higher or lower than the commercial fishery, but it is likely lower (assuming that they are using mostly circle hooks) because the fish are reeled in immediately after being hooked.

National Standard 10 - Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

Because under the status quo (guideline harvest level), the halibut charter fishery has not operated under a derby-style fishery (no in-season closures), safety at sea has not been an issue in this fishery to date. However, concerns have been raised that imposing an IFQ program may lead to more unguided anglers taking trips on rented vessels. This could result in less experienced boat operators participating in the halibut fishery. If their boating skills in the waters off Alaska’s coast is inadequate, safety concerns may arise. Should those concerns be raised it may be more appropriate to address them through licensing requirements to be eligible to rent vessels, as opposed to the IFQ or GHL program.

5.3 Section 303(a)(9) - Fisheries Impact Statement

This section of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. Not imposing an allocation on the charter sector has the potential to create negative impacts to the participants in the commercial halibut fishery, as a greater percentage of the overall halibut quotas goes to the guided sport fishery over time. Under the status quo, the GHL (imposed as a target which would trigger other measures in subsequent years) would not curtail the charter fishing season, but could influence client demand for fishing trips. The impacts of including the halibut charter fleet into the existing halibut IFQ program have been discussed in previous sections of this document. A strict allocation for the charter sector, depending on what percentage is adopted and on future halibut quotas, could adversely impact operators within the charter fleet by curtailing their operating season, and reducing the number of trips, and income, they

are able to generate. The proposed IFQ program provides a mechanism to offset those concerns by allowing the transfer of additional QS/IFQ.

Less obvious impacts could accrue to participants in 'adjacent' fisheries from the proposed IFQ program. As more and more fisheries, both in Alaska and nationwide, become subject to limited entry management measures, existing and potential fishermen have fewer and fewer options upon which to apply their existing or planned investments. Potential entrants into the charter fishery, from in-state and out-of-state, will have to turn to other, perhaps overcrowded, fisheries, or pursue other lifestyles. Perhaps the most immediate and significant impact of the IFQ alternative would be to redirect effort to other guided sport fisheries in Alaska, such as the fully utilized salmon fishery. An IFQ program for the halibut charter fishery could require potential new guides, lodges, and outfitters to acquire QS or limit their participation to salmon, rockfish, and ling cod sport fisheries. However, that has not been proposed as part of this amendment package, and the effort changes in these other fisheries, as a result of the proposed IFQ program, could not be estimated.

Not imposing an allocation could reduce the amount of halibut available to the commercial fisheries, particularly if the charter fishery continues to expand and the halibut quota decreases. This could increase effort by commercial halibut fishermen in other commercial fisheries in which they are permitted to participate.

5.4 Section 303(b)(6) - Limited Entry Requirements

Under Section 303 (b)(6) of the Magnuson Act, the Council and SOC are required to take into account the following factors when developing a limited access system: (A) present participation in the fisheries, (B) historical fishing practices in, and dependence on, the fisheries, (C) the economics of the fisheries, (D) the capability of fishing vessels used in the fisheries to engage in other fisheries, (E) the cultural and social framework of the fisheries, and (F) any other relevant considerations.

In considering a proposed limited entry program for the charter fleet, the Council contracted with ISER in 1997 to provide information on the structure, dynamics, and economics of that industry sector. That information has been updated in this analysis, along with information from the current logbook program which defines active participation in these fisheries and the results of other academic studies. Chapters 3 and 4 contain further descriptions of the economics of the charter fishery, including impacts on coastal communities. Many of the vessels that are used in the halibut charter fishery could be used in other saltwater sport fisheries. They could be used to target salmon species, rockfish species, ling cod, or other groundfish species such as Pacific cod. The salmon fisheries in areas 2C and 3A are fully utilized, and additional effort would come at the expense of present participants in the fishery. Although, many of the 2C vessels and some of the 3A vessels are already involved in the salmon fishery. Some rockfish and ling cod stocks may not be able to support large increases in guided angler effort. Other bottom fish species, such as Pacific cod, are also fully utilized. Increased effort from charter operators would not likely jeopardize the stocks, but would need to be accounted for when setting the TACs for those species.

It is possible that if some vessels are excluded from the halibut charter fishery through the moratorium or IFQ program, those vessels could potentially move into these other fisheries where no barriers to entry exist. It is also possible that vessel owners that own more than one vessel could consolidate quota on to fewer vessels and move some fixed assets to other uses. This would only happen if they were able to book charter clients in a manner that would facilitate that reduction.

All of the alternatives are based on a charter operators present and past participation in the halibut charter fishery. To qualify for the program, the person must meet specified minimum qualification criteria linked to

their participation in the fishery. Under the IFQ alternative, they would be allocated a specified percentage of the halibut quota. Under the moratorium alternative, those meeting the qualification criteria would be allowed to participate in the fishery within the constraints of the GHL management measures.

The economics of the charter fishery are perhaps more limited by the GHL that was passed by the Council than the proposed IFQ program, though the IFQ program will also generate impacts. Those commenting on the program generally feel that the charter operators and the commercial halibut fishery would benefit from an IFQ program (when compared to the current GHL measures), while the guided anglers may lose bargaining power and be disadvantaged through decreased utility derived from the trip or paying a higher price for a trip with the same attributes.

5.5 Regulatory Flexibility Act

5.5.1 Introduction

The Council is considering limiting the halibut charter industry's harvest in IPHC areas 2C and 3A through an IFQ system or implementing a moratorium on new entrants in the halibut charter fleet. The Regulatory Flexibility Act (RFA) requires analysis of impacts to small businesses which may result from regulations being proposed. Since the RFA is applicable to businesses and governmental jurisdictions, guided anglers fall outside of the scope of the RFA. Therefore, they will not be discussed in the RFA context. The focus of the RFA section will be the halibut charter businesses, the commercial IFQ QS holders, and the communities that are dependent upon the halibut resource.

Until the Council makes a final decision, a definitive assessment of the proposed management alternative(s) cannot be conducted. In order to allow the agency to make a certification decision, or to satisfy the requirements of an Initial Regulatory Flexibility Analysis (IRFA) of the preferred alternative, this section addresses the requirements for an IRFA, which is specified to contain the following:

- C A description of the reasons why action by the agency is being considered;
- C A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- C A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- C A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- C An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- C A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 - 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - 2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

3. The use of performance rather than design standards;
4. An exemption from coverage of the rule, or any part thereof, for such small entities.

5.5.2 Statement of Problem

The Pacific halibut resource is fully utilized. The NPFMC recently adopted a GHL to resolve allocation issues between the guided sport sector and other users of the halibut resource. Upon adoption by the Secretary of Commerce, the GHL will slow or stop the open-ended reallocation between the commercial and guided sport fishermen and provide a measure of stability to the halibut fishery. Guided sport IFQs will address problems related to determining the number of charter operators guiding clients, from the charter industry perspective. Extending the existing halibut quota share program to include the guided sport sector, with provisions to recognize the unique nature of the guided sport sector, will resolve future allocation conflicts between the commercial and guided sport sectors (assuming quota can be transferred between the sectors in the long-run), and provide access opportunities for halibut fishermen, processors, and consumers.

Further, National Standard 8 of the Magnuson-Stevens Act directs that “conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts in such communities.” Although the halibut IFQ program was developed under the Halibut Act, which does not require consistency with all of the Magnuson-Stevens’ national standards, the Council believes Congress clearly intended that the Council consider the impacts of all its management measures, including halibut management regulations, on fisheries-dependent communities. The current halibut and sablefish IFQ management structure, despite its many benefits, was not designed to provide transferable quota shares to halibut charter fishermen to provide community development opportunities. As the Council considers modifying the current IFQ management structure to include quota share allocations to halibut charter fisheries, adverse economic impacts on fisheries-dependent coastal communities in the Gulf of Alaska may occur in communities which receive insufficient initial quota share and may further limit economic development opportunities in halibut charter businesses for residents of these communities. In pursuing a CSA program, the Council seeks to:

- a) remove an economic barrier for residents of underdeveloped communities to participate in the halibut charter industry;
- b) provide for sustained participation in the charter industry;
- c) increase geographical diversity of charter operations;
- d) reduce the potential for localized depletion; and
- e) foster economic development and stability in these communities.

5.5.3 Objective Statement of Proposed Action and its Legal Basis

The objective of the proposed action is to design a program that will resolve conflicts between the commercial and guided sport sectors of the halibut fishery in IPHC areas 2C and 3A. During the early 1990's the guided sport fleet experienced substantial growth. Projections made in the mid-1990's indicated that, if left unchecked, the charter fleet could grow to a level equal to or greater than the commercial fleet in Areas 2C

and 3A by year 2008. Growth in charter fleet harvests is difficult to ascertain, with wide fluctuations in harvest levels over the past four years (1995-1998). Yet, it is unlikely that those early projections would be realized. However, decreases in halibut biomass levels, combined with any growth in catch by the charter fleet, would result in a defacto reallocation away from the commercial fleet, under the status quo. The Halibut Act along with the Magnuson-Stevens Act grants the Council authority to oversee allocations of the halibut fishery in Alaskan and Federal waters. Setting overall removals of halibut is under the authority of the International Pacific Halibut Commission.

5.5.4 Description of each Action (non-mutually exclusive alternatives)

A complete list of the alternatives is contained in Section 1 of this document. Though there are more than 60 options and suboptions, the major alternatives being considered are:

1. Status Quo - do not develop measures to include the halibut charter fishery in the current IFQ program.
2. Include the halibut charter sector in the existing halibut IFQ program.
3. Set-aside $\frac{1}{2}$ -2 $\frac{1}{2}$ percent of combined commercial charter TAC for Gulf coastal communities.
4. Implement a moratorium on new vessel entry into the halibut charter fishery.

5.5.5 Reasoning for, and focus of, an IRFA

To ensure a broad consideration of impacts and alternatives, this draft IRFA has been prepared pursuant to 5 USC 603, without first making the threshold determination of whether or not the proposed actions would have a significant economic impact on a substantial number of small entities. Until the Council recommends a specific alternative(s) such determination cannot be made; therefore, this section attempts to provide information to differentiate among the proposed alternatives, in the context of the requirements to prepare an IRFA. In determining the scope, or 'universe', of the entities to be considered in an IRFA, NMFS generally includes only those entities, both large and small, that can reasonably be expected to be directly affected by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

5.5.6 Requirement to Prepare an IRFA

The RFA first enacted in 1980 was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting (negative) impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

5.5.7 What is a Small Entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern’ which is defined under Section 3 of the Small Business Act. ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and not dominate in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$ 3 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small businesses if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

5.5.8 Description of the Businesses and Communities Affected by the Proposed Action(s)

5.5.8.1 Charter Fishery

Businesses: Chapter 3 of this document, the associated Appendices, and particularly the 1997 EA/RIR/IRFA (NPFMC 1997) provide as detailed a description of the guided halibut sport fishery (charter boat fleet) as is available. That section of the document shows that the number of halibut charter operation owners in the Area 2C and 3A fisheries were 386 and 434, respectively, according to 1999 ADFG Log book data. The 1998 logbook program indicated a similar number of active participants. Actual vessel numbers are slightly higher as some businesses own multiple vessels, so the total number of affected vessels is around 1,100, again based on participation as evidenced by the 1998 and 1999 logbook program.

The charter fleet is a fairly homogeneous group with similar operating characteristics and vessel sizes, with the exception of a few larger, ‘headboat’ style vessels and lodges that operate several vessels. The vast majority of the vessels are from 25-50 ft in length and carry up to six fishermen each. While these vessels are very similar in size, the operations have different participation patterns and harvest levels in the fishery as was shown in the figure in Section 4.3.6. That figure shows the halibut catch by owner during 1999. According to that data about 175 vessels in 3A and 240 vessels in 2C harvested less than 100 halibut. Therefore over one-third of the fleet harvested less than 100 halibut that year. These vessels retained 5 and 9.6 halibut per trip on average in Areas 2C and 3A, respectively, according to 1999 logbook data. To retain 100 halibut at these rates vessels would need to make 20 trips in Area 2C and 10.4 trips in Area 3A. At \$1,000 per trip (\$200 per person and five clients) this amount to \$10,000 to \$20,000 per owner. These charter operators likely spend only part of the year taking halibut clients fishing, given that number of trips and the gross revenue it would generate. The remainder of the year they may have been offering charters for other types of fishing, sightseeing, hunting, or camping activities. Alternatively, these owners may only be part time participants in the charter business. During the remainder of the year they may hold other jobs outside of the charter boat for hire field.

The four owners with the largest catch histories harvested over 4,000 halibut, on average, in Area 2C and just under 3,800 halibut in Area 3A during 1999. At 20 pounds per fish this equates to 80,000 pounds of halibut for those four 2C owners on average, and 76,000 pounds for the four Area 3A vessel owners. The largest of these companies, which are lodges, may be considered a large entity under SBA standards, but that cannot be confirmed. All of the other 800 plus charter operations would likely be considered small entities by the SBA, since they would be expected to have gross revenues of less than \$3 million on an annual basis.

Chapters 3 and 5 contain more detailed breakdowns on these vessels by size and home port, including operating characteristics and economic information for vessels operating in the Cook Inlet portion of Area 3A. Table 3.13 shows that only 13 of the 434 charter business in Area 3A were run by residents of states other than Alaska (the residence of 3 of the owners were unknown). Therefore, about 97% of the charter owners in Area 3A reside in Alaska. In area 2C, 48 of the 386 business owners resided outside Alaska. That translates into just under 87% of businesses being Alaskan owned. It is likely that most of the Alaskan owners reside in small communities. Owners from outside Alaska may reside in either small or large communities.

Communities: Vessels operating in the halibut charter industry made deliveries to 68 different 2C and 32 different Area 3A ports in 1999. Those ports are reported in Table 5.1, along with the number of vessels reporting at least one trip there in the logbook data. All of those communities would be considered small entities by SBA standards, because they have populations of less than 50,000. In fact, many of the communities are very small with limited employment opportunities. If the halibut charter allocation is limited through the GHL or IFQs, then the impacts of the halibut charter fishery are mainly distributional. Some small communities will benefit while others are negatively impacted as quota/landings moves among ports.

The communities where charter trips took place are listed in Table 5.1. Summing the total number of charter vessels or owners in Table 5.1 will overstate the actual number that were in the fishery in 1999, because some vessels delivered to more than one port. In fact, one vessel reported making deliveries to five ports in 1999. Several other vessels reported making deliveries to two, three, or four ports. Those vessels would be included in each port where they made a landing, as would the owner of that vessel. So, some vessels and owners would be counted two, three, four, or five times.

It should be noted that the only way to increase halibut charter landings in these communities is to reduce the harvest of the commercial fishery (assuming a constant biomass), since the halibut fishery is fully subscribed. Commercial vessels often deliver to many of the same ports as the charter sector (see Table 5.2) in addition to other ports, both in Alaska and outside the State. But overall, the ports with large charter industries also tend to be the ports where substantial volumes of commercial halibut are landed. Sitka, Seward, and Homer are good examples. Therefore, the impacts of shifting the allocation between the commercial and guided sport sectors are mainly distributional¹. However, it may be that more of the profits from the commercial sector would flow to large communities relative to the charter sector. This is because owners of vessels in the commercial fleet are more likely to reside in large communities, and the profits that flow from their operations would be more likely to go to the economies where they reside.

Processors: Clients of halibut charter operations utilize the services of processors to preserve their catch, before it is transported home. For halibut this typically means shrink wrapping and freezing the catch. Currently there is no information available on the number of processors of charter caught halibut. Data on the charter fishery are collected through mail back surveys and logbooks. Neither of these sources of data link catch to the processor, as fish tickets do in the commercial sector. Therefore there is no information reported on the number of processors involved the processing of charter caught halibut or its economic impact in Areas 2C and 3A.

The requirement for a processor to be a small entity is that they must have fewer than 500 employees. It is likely that most of the processors of charter caught halibut would be considered small entities based on that

¹Changes in the overall impact will depend on the value that is derived from a pound of halibut in the commercial and charter sectors by the communities. That difference cannot be determined given the information that is currently available, but is dependent on both direct and indirect expenditures within the community.

definition. However, since data are not collected on these companies, that cannot be confirmed. If they are large entities, it is likely that they are more reliant on commercial fisheries than the charter.

5.5.8.2 Commercial fishery

Fishing Businesses: Other small entities which may be affected by the proposed alternatives include vessels participating in the commercial halibut fisheries. The IFQ alternative essentially represents a trade-off in benefits between the charter and commercial sectors. Baseline data on the number of participants in the commercial halibut fishery are presented in Chapter 3. Information in that section shows that in 1999 a total of 1,685 entities held quota shares in Area 2C and 2,247 in Area 3A. The vast majority of these entities would be considered small entities. However, a few of the participants will likely meet the \$3 million gross revenue threshold and be considered large entities under the RFA. These are entities that own halibut IFQ and participate in other fishing activities. The use caps limit entities from holding halibut QS in amounts that would allow them to harvest over \$3 million worth of halibut annually. In fact, the use caps likely limit a person's revenue from halibut harvesting halibut to less than \$600,000 in most years. Therefore, at least 80% of even the largest halibut producer's ex-vessel gross revenue would likely need to come from sources other than halibut, before they would be classified as a large entity.

Communities: Stable harvests in the commercial sector would benefit communities that are more heavily reliant on the commercial sector than the charter sector. Most of these communities would be considered small government jurisdictions, however, some of the communities where halibut landings are made would not be considered small. Also some participants in the commercial halibut fishery reside in communities that would not meet the small government jurisdiction definition of the RFA. Table 5.2 shows the gross revenues that were generated from commercial halibut landings that were made in those ports. Cities with an asterisk by its name were thought to have populations of more than 50,000 people, and would be considered large government jurisdictions.

The owners of commercial quota shares reside in 95 Alaskan communities, 109 Washington communities, as well as 28 other states. Anchorage is the only community in Alaska that has more than 50,000 residents. Fairbanks (31,423) and Juneau (31,262) have the second and third largest number of residents in the State according to data published on the web site of the Alaska Department of Community and Regional Affairs. Residents of Anchorage hold a total of 6.5 million halibut QS units. Residents of the other Alaskan communities hold the remaining 161.6 million QS units held by Alaskan residents.

The residents of Washington State hold about 50 million halibut QS units. Those appear to be about equally divided among residents of small and large communities. Residents of other states hold about 25 million QS units. Those are also held by residents of small and large communities. However the majority of the QS are held by Oregon residents from the communities of Newport, Astoria, Woodburn, and Warrenton. Each of those communities had residents with combined QS holdings of more than 1 million units. Newport was the largest with over 3 million QS units held by residents.

Processors: A total 527 registered buyer applications of commercial halibut were filed with NMFS and approved in 2000. The vast majority of those processors took deliveries of halibut harvested from 2C or 3A, and all but a very few of the processors would be considered small entities since they have less than 500 employees.

PUBLIC REVIEW DRAFT

Table 5.1. Charter owners and vessels by port from 1999 ADFG logbooks.

| Area | Port | Vessels | Owners | Area | Port | Vessels | Owners |
|------|------------------|---------|--------|------|------------------|---------|--------|
| 2C | ANGOON | 6 | 5 | 3A | AFOGNAK | 2 | 2 |
| 2C | AUKE BAY | 37 | 32 | 3A | AMOOK ISLAND | 1 | 1 |
| 2C | BAR HARBOR | 2 | 2 | 3A | ANCHOR POINT | 26 | 24 |
| 2C | BARTLETT COVE | 2 | 2 | 3A | ANCHOR RIVER | 2 | 2 |
| 2C | BOARDWALK | 5 | 1 | 3A | CORDOVA | 6 | 6 |
| 2C | CANNERY COVE | 5 | 2 | 3A | DEEP CREEK | 108 | 95 |
| 2C | CAPE CHACON | 2 | 1 | 3A | ELLAMAR | 1 | 1 |
| 2C | CEDARS LODGE | 2 | 2 | 3A | HAPPY VALLEY | 16 | 7 |
| 2C | CLOVER PASS | 2 | 2 | 3A | HIDDEN BASIN | 2 | 2 |
| 2C | COFFMAN COVE | 6 | 5 | 3A | HOMER | 139 | 125 |
| 2C | CRAIG | 51 | 30 | 3A | IRON CREEK | 1 | 1 |
| 2C | CRESCENT HARBOR | 8 | 8 | 3A | KODIAK | 35 | 34 |
| 2C | EL CAPITAN | 6 | 2 | 3A | LARSEN BAY | 17 | 15 |
| 2C | ELFIN COVE | 26 | 19 | 3A | LOWELL POINT | 1 | 1 |
| 2C | EXCURSION INLET | 2 | 2 | 3A | MUSKOMEY BAY | 2 | 2 |
| 2C | FUNTER BAY | 3 | 2 | 3A | NINILCHIK | 23 | 21 |
| 2C | GULL COVE | 2 | 2 | 3A | OLD HARBOR | 6 | 4 |
| 2C | GUSTAVUS | 20 | 17 | 3A | PARKS CANNERY | 1 | 1 |
| 2C | HAINES | 8 | 8 | 3A | POOHS LANDING | 2 | 1 |
| 2C | HANSEN FLOAT | 3 | 3 | 3A | PORT LIONS | 7 | 6 |
| 2C | HOONAH | 14 | 13 | 3A | PORT WAKEFIELD | 1 | 1 |
| 2C | JUNEAU/DOUGLAS | 20 | 16 | 3A | RASPBERRY ISLAND | 2 | 2 |
| 2C | KELP BAY | 4 | 2 | 3A | SELDOVIA | 9 | 9 |
| 2C | KETCHIKAN | 49 | 43 | 3A | SELIEF BAY | 2 | 1 |
| 2C | KILLISNOO | 4 | 4 | 3A | SEWARD | 83 | 71 |
| 2C | KLAWOCK | 11 | 6 | 3A | SILVER SALMON | 1 | 1 |
| 2C | KNUDSON COVE | 14 | 13 | 3A | UGAK BAY | 2 | 2 |
| 2C | LODGE | 3 | 2 | 3A | VALDEZ | 55 | 53 |
| 2C | MORNE ISLAND | 2 | 1 | 3A | WHISKEY GULCH | 1 | 1 |
| 2C | OTHER | 13 | 13 | 3A | WHITTIER | 21 | 20 |
| 2C | PELICAN | 5 | 5 | 3A | YAKUTAT | 12 | 8 |
| 2C | PETERSBURG | 31 | 28 | 3A | ZACHAR BAY | 3 | 2 |
| 2C | PORT ALEXANDER | 4 | 3 | | | | |
| 2C | PORT ALTHROP | 3 | 2 | | | | |
| 2C | PORT PROTECTION | 3 | 2 | | | | |
| 2C | PYBUS POINT | 2 | 2 | | | | |
| 2C | ROCKY POINT | 3 | 2 | | | | |
| 2C | S KAIGANI BAY | 3 | 1 | | | | |
| 2C | SALMON FALLS | 5 | 2 | | | | |
| 2C | SEALING COVE | 6 | 6 | | | | |
| 2C | SHELTER ISLAND | 4 | 2 | | | | |
| 2C | SITKA | 133 | 110 | | | | |
| 2C | SKAGWAY | 3 | 3 | | | | |
| 2C | SPORTSMAN COVE | 5 | 1 | | | | |
| 2C | SURESTRIKE | 2 | 1 | | | | |
| 2C | TENAKEE | 7 | 7 | | | | |
| 2C | THORNE BAY | 9 | 4 | | | | |
| 2C | WARM SPRINGS BAY | 10 | 3 | | | | |
| 2C | WATERFALL | 26 | 2 | | | | |
| 2C | WHALE BAY | 2 | 1 | | | | |
| 2C | WHALE PASS | 6 | 4 | | | | |
| 2C | WHALERS COVE | 6 | 3 | | | | |
| 2C | WHALES RESORT | 2 | 1 | | | | |
| 2C | WRANGELL | 14 | 12 | | | | |
| 2C | YES BAY | 13 | 2 | | | | |

PUBLIC REVIEW DRAFT

Table 5.2. Summary of ex-vessel revenues from the commercial fishery, 1995-99.

| Sum of Gross Earnings | | Year | | | | | Grand Total |
|-----------------------|----------------------|------------|------------|------------|------------|------------|-------------|
| State | Port | 95 | 96 | 97 | 98 | 99 | |
| AK | ANCHOR POINT | | | | 1,139 | | 1,139 |
| | ANCHORAGE* | | 6,725 | 25,016 | 70,132 | | 101,873 |
| | ANGOON | 111,697 | 87,509 | 82,633 | 27,823 | 38,051 | 347,715 |
| | BARANOF WARM SPRINGS | | 27,601 | 11,032 | | | 38,633 |
| | CHIGNIK | | | | 4,973 | | 4,973 |
| | CORDOVA | 1,781,749 | 2,001,284 | 2,825,906 | 1,471,107 | 2,740,079 | 10,820,126 |
| | CRAIG | 668,746 | 991,971 | 1,090,759 | 607,849 | 738,572 | 4,097,897 |
| | DUTCH HBR/UNALASKA | 2,968 | 54,233 | 9,264 | 33,164 | 1,777 | 101,406 |
| | EDNA BAY | 27,325 | 23,843 | 29,300 | | | 80,467 |
| | ELFIN COVE | 178,734 | 89,482 | 80,406 | 8,380 | | 357,001 |
| | EXCURSION INLET | 318,595 | 153,501 | 75,798 | 5,395 | | 553,289 |
| | GIRDWOOD | | | 1,874 | | | 1,874 |
| | GUSTAVUS | 116,623 | 157,019 | 110,859 | 95,256 | 108,042 | 587,799 |
| | HAINES | 66,512 | 79,956 | 190,086 | 1,083,555 | 1,109,594 | 2,529,703 |
| | HOLLIS | | 45 | | 370 | | 415 |
| | HOMER | 5,688,487 | 7,631,857 | 8,714,397 | 7,770,941 | 9,929,417 | 39,735,100 |
| | HOONAH | 1,826,650 | 2,764,716 | 3,846,839 | 1,829,889 | 2,535,715 | 12,803,809 |
| | HYDER | 3,187 | 4,107 | 4,862 | 2,304 | 3,431 | 17,891 |
| | JUNEAU | 898,906 | 2,062,209 | 3,436,267 | 2,343,456 | 5,515,122 | 14,255,961 |
| | KAKE | 756,395 | 920,960 | 926,616 | 157,730 | 5,309 | 2,767,010 |
| | KASILOF | 13,284 | 6,333 | | 2,020 | | 21,637 |
| | KENAI | 508,771 | 679,510 | 466,951 | 311,420 | 324,309 | 2,290,962 |
| | KETCHIKAN | 854,249 | 1,035,566 | 1,283,148 | 734,028 | 1,065,841 | 4,972,831 |
| | KING COVE | 161,359 | 192,190 | | | 887 | 354,436 |
| | KLAWOCK | 64,684 | | | | | 64,684 |
| | KODIAK | 12,200,925 | 12,440,337 | 15,418,179 | 6,620,864 | 10,250,287 | 56,930,591 |
| | METLAKATLA | 109,019 | 95,056 | 89,560 | 23,011 | 39,408 | 356,054 |
| | NIKISKI | 52,917 | 31,598 | | 128 | | 84,642 |
| | NINILCHIK | 138,510 | 135,089 | 260,645 | 291,816 | 168,790 | 994,850 |
| | OLD HARBOR | | 1,977 | 157 | 126 | | 2,261 |
| | PELICAN | 1,712,383 | 1,564,205 | 1,087,903 | 17,161 | 263,422 | 4,645,074 |
| | PETERSBURG | 4,722,819 | 5,900,427 | 5,515,923 | 3,403,740 | 4,305,313 | 23,848,222 |
| | PORT ALEXANDER | 140,076 | 155,265 | 205,191 | 84,768 | 183,582 | 768,881 |
| | PORT GRAHAM | | | 83,605 | | | 83,605 |
| | PORT ORCHARD | | | | | 3,139 | 3,139 |
| | PORT PROTECTION | | | 386 | | | 386 |
| | PORTAGE BAY | | 496 | | | | 496 |
| | SAND POINT | 36,140 | 17,629 | | 10,105 | | 63,874 |
| | SELDOVIA | 4,352 | 2,264 | 2,503 | 2,999 | 4,319 | 16,437 |
| | SEWARD | 4,817,417 | 5,602,397 | 7,642,425 | 4,787,574 | 9,437,764 | 32,287,577 |
| | SITKA | 5,695,570 | 6,268,762 | 7,477,034 | 4,299,169 | 5,103,066 | 28,843,601 |
| | SKAGWAY | 8,134 | 7,266 | 11,170 | 44,991 | 49,106 | 120,667 |
| | TENAKEE SPRINGS | 987 | 3,393 | 388 | 2,442 | | 7,209 |
| | THORNE BAY | 6,552 | | | | | 6,552 |
| | VALDEZ | 254,806 | 160,931 | 186,850 | 113,374 | 217,339 | 933,300 |
| | WHITTIER | 207,930 | 497,874 | 607,453 | 384,664 | 695,786 | 2,393,708 |
| | WRANGELL | 955,340 | 1,821,100 | 2,190,121 | 1,075,514 | 2,238,512 | 8,280,586 |
| | YAKUTAT | 1,277,324 | 1,281,872 | 2,608,225 | 1,250,095 | 2,472,949 | 8,890,465 |
| AK Total | | 46,390,120 | 54,958,553 | 66,599,733 | 38,973,473 | 59,548,926 | 266,470,805 |
| OR | ASTORIA* | 17,507 | 120,631 | 109,633 | 36,745 | 3,046 | 287,561 |
| | NEWPORT* | | 47,028 | | | | 47,028 |
| | WARRENTON | 596,402 | 219,434 | 207,683 | | 47,844 | 1,071,363 |
| OR Total | | 613,908 | 387,092 | 317,316 | 36,745 | 50,890 | 1,405,951 |
| WA | ANACORTES* | 50,755 | 24,646 | 14,027 | | | 89,428 |
| | BELLEVUE* | 6,325 | | | | 58,385 | 64,710 |
| | BELLINGHAM* | 2,706,728 | 3,823,612 | 4,127,742 | 3,063,708 | 2,806,984 | 16,528,774 |
| | EDMONDS | 101,802 | | | | | 101,802 |
| | LA CONNER | 137,274 | 96,505 | 93,344 | 53,620 | 13,266 | 394,009 |
| | PORT ORCHARD | 1,368 | 9,364 | | 7,613 | 405 | 18,749 |
| | PORT TOWNSEND | 11,261 | | | | | 11,261 |
| | SEATTLE* | 1,124,740 | 1,869,636 | 1,461,727 | 462,540 | 441,402 | 5,360,045 |
| WA Total | | 4,140,253 | 5,823,763 | 5,891,412 | 3,587,481 | 3,561,856 | 23,004,765 |
| Grand Total | | 51,144,281 | 61,169,409 | 72,808,461 | 42,597,699 | 63,161,672 | 290,881,521 |

Processors of commercially caught halibut represent a very large range of operation types. Some of the processors own large pollock processing plants in the Bering Sea in addition to other processing facilities in

the Gulf of Alaska. They would be considered large entities. On the other end of the spectrum are very small companies that are basically buyers and shippers of halibut for the fresh market. These operations may have as few as one employee, and their operations likely have few fixed assets.

5.5.9 Recordkeeping requirements

Additional recordkeeping and reporting measures will likely be implemented in conjunction with an IFQ program. In and of itself, the proposed recordkeeping and reporting requirements would not likely represent a 'significant' economic burden on the small entities operating in this fishery. Existing reporting requirements through the State of Alaska and NMFS RAM Division would likely negate additional requirements relative to the IFQ alternative.

5.5.10 Potential Impacts of the Alternatives on Small Entities

5.5.10.1 Status quo

The status quo alternative specifies the GHL as a target amount of halibut that the charter fleet can harvest. If the GHL is exceeded then management measures would be imposed in subsequent years to constrain the harvest of halibut. GHL management measures that are expected to be the most effective would not directly curtail the number of trips charter operators could take, instead they would be directed at limiting client demand. For example, reduced bag limits for the guided angler could result in fewer trips, thereby reducing revenues for the charter fleet. Harvests (and revenues given our current understanding of price elasticities) in the commercial sector would be then be larger than without the GHL, since charter harvests directly reduce the amount of halibut available to the commercial sector.

Because both the charter and commercial sectors are primarily comprised of small businesses, the impacts of the status quo will be to shift benefits between small businesses and government jurisdictions in the commercial and charter sectors. The way that the GHL is structured, benefits will likely flow from the commercial sector to the charter sector until the target GHL is reached, then the quota shifts and benefit shifts between the sectors should stabilize. Prior to the GHL management program, harvests in the charter sector would be allowed to continue to grow until constrained by client demand or the overall harvest caps for halibut.

5.5.10.2 Set an allocation of halibut for the guided halibut fishery through an IFQ program

As discussed previously in this document, this alternative would limit the halibut harvested by anglers on charter vessels in Areas 2C and 3A. The impacts resulting from limiting the harvests will likely vary with the actual allocation recommendation and IFQ transferability restrictions imposed. Some of the options and suboptions have the potential to result in adverse, economic impacts on individual small charter operators in Areas 2C and 3A. This is especially true of charter operators that are just starting their business and would be allocated small amounts of QS or none at all. These charter operators would then be required to purchase QS for their business to meet increases in client demand. On the other hand, they would be purchasing QS from persons that also operated small businesses. Therefore the losses by one small business would be offset by gains in another small business.

If the GHL measures imposed do not limit the growth of charter harvest, then the harvest share available to commercial halibut fishermen, most of whom are also small entities would be reduced. The IFQ program, unlike the GHL, would initially allocate a specific percentage of the combined CEY to the commercial and charter sectors. The levels of allocation that are under consideration would limit the charter sector to levels

less than or approximately equal to the GHL. The smallest allocation option for the charter sector would likely require them to purchase QS to maintain their current harvest levels. This is because the QS will probably be distributed to more operators than fished in a year and the total size of the allocation is less than the guided anglers are currently harvesting (at least in Area 2C).

After the initial allocation, only their own transfers, changes in stock size, and other removals (e.g., unguided sport and bycatch) outside the IFQ program would affect an individual's harvest amount. Transfers of quota between two individuals would only impact their individual harvest amounts and not other QS holders in the commercial or charter sectors, because the total number of QS does not change; they are simply redistributed.

Passage of an IFQ program would likely benefit the current owners of charter operations relative to the status quo. Under an IFQ program the owners would have harvest rights to a specific amount of halibut. This would allow them to plan their fishing season and if needed they could obtain the rights to additional halibut from others which hold harvest rights. Those persons selling the harvest use rights would then be compensated for reducing their participation or leaving the fishery. Charter operators that wish to enter the fishery in the future would probably prefer that the fishery continues to be managed under the status quo.

Concern has been expressed that the quota would tend to migrate to the ports with larger guided halibut industries after it is issued. This would tend to shift the negative impacts of the IFQ program to the smaller and more remote communities. However, the Council is also considering a set-aside of up to 2.5% of the combined commercial and charter allocation. This would be targeted for issuance to remote communities with limited charter operations. A total of 37 communities have been identified in areas 2C and 3A (see Chapters 3 and 4) that meet the guidelines for this proposed program. The program is designed to make halibut available to charter operations in these communities at no cost, eliminating one of the barriers to entry that charter operators in these communities would face.

Given that these communities have not developed substantial charter operations in the past, it is unknown whether providing access to halibut at no charge over a specified period of time will enable them to overcome other economic and infrastructure barriers to entry. Funding this program would mainly come at the expense of other small communities and businesses, but the impacts cannot be determined until the funding mechanism and the set-aside amounts are determined.

The only information available on processors of halibut harvested by guided anglers comes from Lee et al (2000). This study indicates that charter clients from Alaska spent less per trip in the Cook Inlet region on processing (\$8.15) per trip than persons living outside of Alaska (\$42.84). These levels of expenditure indicate that the charter industry is important to the economic well being of processors, as are landings to the commercial sector. Any action that allocates more halibut to the commercial sector will negatively impact these processors (assuming they are different entities from the processors in the commercial sector). Conversely, increasing the allocation to the charter sector would tend to decrease revenues earned by processors of commercial halibut.

The processors of commercially caught halibut would likely benefit from an IFQ program in the charter sector, if it ensures that the commercial allocation is not continually eroded. All of the allocations under consideration would ensure that the commercial sector would be granted either about the same or a larger percentage of the halibut quota than under the status quo (GHL). Therefore, processors of commercial halibut would likely benefit from an IFQ program in the long run, assuming that large scale QS transfers are not made from the commercial to the charter sector.

Benefit changes between processors of commercially and charter caught halibut are primarily going to be distributional. As one sector is allowed to harvest more halibut, the processors of fish for that sector will be allowed to process more, while the other sector would harvest and process less. The information is currently unavailable to allow the benefits that a processor derives from a pound of commercially caught halibut versus a pound of halibut harvested by guided anglers to be determined. The information currently available is presented in Section 4.2, and seems to indicate that processors of commercial and sport caught fish derive about the same gross revenue per pound. Yet, without any information on the cost structure of the various operations or knowing the processors of charter caught halibut, it is not possible to determine either the producer surplus changes or distributional impacts these small entities will realize.

5.5.10.3 Implement a moratorium on new entry into the halibut charter fishery

Passage of a moratorium would also likely benefit the current owners of charter businesses, which are almost all small businesses, because the total number of charter operations would be limited. The status quo implements management measures that are designed to limit the charter harvest of halibut to the GHL targets, but the number of vessels that can enter the fishery is not limited. Therefore as more vessels enter the fishery, each vessel on average would harvest fewer halibut. The moratorium would provide an upper bound on the number of vessels that would be allowed to participate in the fishery at any one time. Persons wishing to leave the fishery would then be allowed to sell their moratorium permit and receive some compensation for leaving the fishery. However, the sale of the permit may negatively impact the other charter owners remaining in the fishery if the new person is able to attract clients that would allow them to harvest more halibut than the person they replaced. These impacts of a moratorium is to redistribute the benefits from the charter operator between those currently in the fishery, and those that wish to enter or that do not have enough participation history to qualify for a moratorium permit. All of those business are likely to be small entities.

5.5.11 Conclusion

Some of the alternatives under consideration could result in a significant impact on a substantial number of small entities. However, the impacts are likely distributional in nature between various groups small entities. In other words, alternatives that benefit one group of small entities will likely come at the expense of another group of small entities. A more definitive assessment will depend on the specific alternatives selected by the Council. A formal IRFA focusing on the preferred alternative(s) will be included in the final regulatory package submitted for Secretarial review.

6.0 References

- Anonymous. Survival rates for some Florida fishes. Unpublished, online at www.fmri.usf.edu/fish/release.htm
- Boardman, A.E., D.H. Greenberg, A.R. Bining, and D.L. Weimer. 1996. *Cost-Benefit Analysis: Concepts and Practice*. Prentice Hall. Upper Saddle River, N.J.
- Boardman, A.E., D.H. Greenberg, A.R. Bining, and D.L. Weimer. 1996. *Cost-Benefit Analysis: Concepts and Practice*. Upper Saddle River, N.J.: Prentice Hall.
- Bugley, Karen and Gary Shepherd. 1991. Effect of catch-and-release angling on the survival of black sea bass. *North American Journal of Fisheries Management* 11:468-471.
- Clark, W. and S. R. Hare. 2000. Assessment of the Pacific halibut stock in 2000. *In*: IPHC Report of Assessment and Research Activities 2000. IPHC, P. O. Box 95009, Seattle, WA 98145-2009. X pp.
- Clark, W. and A. Parma. 1998. Assessment of the Pacific halibut stock in 1998. *In*: IPHC Report of Assessment and Research Activities 1998. IPHC, P. O. Box 95009, Seattle, WA 98145-2009. 348 pp.
- Coughenower, D.D. 1986. Homer, Alaska guided sport fishing industry study. Marine Advisory Bulletin No. 22, Alaska Sea Grant College Program, University of Alaska, Fairbanks AK.
- Dean, M. R. and A. L. Howe. 1999. Alaska Department of Fish and Game sportfishing guide and business registration and saltwater sportfishing charter vessel logbook program, 1998. Alaska Department of Fish and Game, Special Publication No. 99-1, Anchorage.
- Dinneford, E., K. Iverson, B. Muse, and K. Schelle. 1999. Changes Under Alaska's Halibut IFQ Program, 1995 to 1998. Available from: CFEC, 8800 Glacier Highway, Suite 109, Juneau, Alaska 99801. http://www.cfec.state.ak.us/research/H98_TS/h_title.htm
- Edwards, S. F., 1990. An Economics Guide to Allocation of Fish Stocks between Commercial and Recreational Fisheries. NOAA Technical Report NMFS 94.
- GMFMC. 2001. A Draft Amendment for a Charter Vessel/Headboat Moratorium. Gulf of Mexico Fishery Management Council. The Commons at Rivergate, 3018 US Highway 301 North, Suite 301, Tampa FL 33619-2266. 108 p.
- Haley, S., M. Berman, S. Goldsmith, A. Hill, and H. Kim. 1999. Economics of Sport Fishing in Alaska. Available from ISER, UAA, 3211 Providence Drive, Anchorage, AK 99508.
- Herrmann, M., S.T. Lee, C. Hamel, K. Criddle, H. Geier, J. Greenberg, C. Lewis. 1999. *An Economic Assessment of the Marine Sport Fisheries in Lower Cook Inlet*. Proceedings of the seventh Minerals Management Service information transfer meeting. OCS Study MMS 99-022, January 1999.
- Herrmann, M. 1999. Relationship Between Ex-vessel Revenue and Halibut Quota: Some Observations. Manuscript prepared for the North Pacific Fishery Management Council, 605 West Fourth Avenue, Suite 306, Anchorage, Alaska. November 9, 1999. 35pp.
- Institute for Social and Economic Research (ISER). 1999. Economics of Sport Fishing in Alaska. Prepared for Alaska Department of Fish and Game. Anchorage, Alaska.
- Iverson, K., A. Tingley, P. Malecha. 1999. Executive Summary. Changes under Alaska's halibut IFQ program, 1995 to 1998. November 1999. 22 p. Available from: CFEC, 8800 Glacier Highway, Suite 109, Juneau, Alaska 99801. http://www.cfec.state.ak.us/research/H98_TS/h_xsum98.pdf
- Johnston, R. J., J. G. Sutinen. *Appropriate and Inappropriate Economic Analysis for Allocation Decisions* 1999. Report to the Halibut Coalition, Juneau, Alaska. October.
- Knapp, G. 1997a. *Modeling Community Economic Impacts of the Alaska Halibut IFQ Program*. Final project report on Saltonstall Kennedy Program award #NA37FD0184. Institute of Social and Economic Research, University of Alaska, Anchorage.
- _____. 1997b. *Alaska Halibut markets and the Alaska halibut IFQ Program*. 1999. Project report on Saltonstall Kennedy Program award #NA37FD0184. Institute of Social and Economic Research, University of Alaska, Anchorage. January 1999. January, 1997. 54 pp.
- Lee, S.T., M. Herrmann, I. Wedin, K. R. Criddle, C. Hamel, and J. Greenberg. 1999a. *Summary of Angler Survey: Saltwater Sport Fishing off the Kenai Peninsula, Alaska*. Final report, Alaska Sea Grant Project 98-403 R14-17. University of Alaska Fairbanks. April.
- _____. M. Herrmann, K. Criddle, and Charles Hamel. 1999b. *The Effect of Fishery Attributes on Participation Rates: the Kenai Peninsula Marine Sport Fishery*. Working Paper. November.
- Lucy, Jon A. and Michael D. Arendt. 1999. Short-term release mortality in the Chesapeake Bay recreational tautog fishery. Paper presented at the National Symposium on Catch and Release in Marine Recreational Fisheries, Virginia Sea Grant Marine Advisory Program, Virginia Institute of Marine Science.

PUBLIC REVIEW DRAFT

- Lucy, J. and T. Holton. No date. Release mortality in Virginia's recreational fishery for summer flounder, *Paralichthys dentatus*. Unpublished, online at http://www.ncoif.com/SF_Study.html.
- Lukacovic, R. 1999. 1999 Striped bass circle hook study. Maryland Department of Natural Resources.
- National Research Council. 1999a. *Sharing the Fish: Towards a National Policy on Individual Fishing Quotas*. National Academy Press. Washington, D.C. 422 p.
- _____. 1999b. *The Community Development Program in Alaska*. National Academy Press. Washington, D.C. 215 p.
- NMFS. 2000. 2000 Report to the Fleet. NMFS RAM Division, P. O. Box 21668, Juneau Alaska, 99802. 35 p. http://www.fakr.noaa.gov/ram/RTF_2000_web_copy.pdf
- _____. 2000b. Endangered Species Act - Section 7 Consultation. Biological Opinion and Incidental Take Statement. NMFS, Protected Resources Division, P. O. Box 21668, Juneau Alaska, 99802. 352 pp.
- National Park Service. 1998. Commercial Fishing Environmental Assessment: Glacier Bay National Park and Preserve. USDI, NPS, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, AK 99503-2892.
- North Pacific Fishery Management Council (NPFMC). 1994. Faces of the Fisheries. Available from: NPFMC, 605 Fourth Avenue, Suite 306, Anchorage Alaska, 99501.
- _____. 1997. Draft Environmental Assessment / Regulatory Impact Review / Initial Regulatory Flexibility Analysis for Proposed Regulatory Amendments to Implement Management Alternatives for the Guided Sport Fishery for halibut off Alaska. North Pacific Fishery Management Council, Anchorage.
- _____. 2000a. EA/RIR/IRFA for a regulatory amendment to implement management measures under a guideline harvest level and/or moratorium for halibut in Areas 2C and 3A. January 10, 2000. xxx p. Available from: NPFMC, 605 Fourth Avenue, Suite 306, Anchorage Alaska, 99501. <http://www.fakr.noaa.gov/npfmc/Committees/halibut%20issues/zghlmrg.pdf>
- _____. 2000b. Preliminary Review of Halibut Charter IFQ Analysis: Review of Management Alternatives and Analytical Design. 78 p. Available from: NPFMC, 605 Fourth Avenue, Suite 306, Anchorage Alaska, 99501. <http://www.fakr.noaa.gov/npfmc/Committees/Halibut%20Issues/prelimreviewFINAL.pdf>
- _____. 2000c. Discussion Paper on a Community Set-Aside of Halibut Charter IFQ. 20 p. Available from: NPFMC, 605 Fourth Avenue, Suite 306, Anchorage Alaska, 99501. http://www.fakr.noaa.gov/npfmc/IFQ_Set%20aside_Dec.pdf
- OECD. Towards Sustainable Fisheries. Paris, 1997.
- Pautzke, C. G. and C.W. Oliver. 1997. Development of the Individual Fishing Quota Program for Sablefish and Halibut Longline Fisheries off Alaska. North Pacific Fishery Management Council, 605 West Fourth Avenue, Suite 306, Anchorage, Alaska. X pp.
- Shirley, S, E. Dinneford, A. Tingley, K. Iverson, and K. Schelle. 1999. Gulf of Alaska Coastal Community Reports. Holdings of Limited Entry Permits, Sablefish Quota Shares, and Halibut Quota Shares Through 1998 and Data on Fishery Gross Earnings. Available from: CFEC, 8800 Glacier Highway, Suite 109, Juneau, Alaska 99801. <http://www.cfec.state.ak.us/research/coast99/rptgrp99.htm>
- Smith, P. 1999 report to the IFQ fleet. 1999. NMFS, Juneau, Alaska. 36 pp.
- Sullivan, P., A.M. Parma, and W.G. Clark. In press. Pacific halibut assessment: data and methods. IPHC Scientific Report. IPHC, P. O. Box 95009, Seattle, WA 98145-2009.
- Steinback, S.R. 1999. *Regional Economic Impact Assessments of Recreational Fisheries: An Application of the IMPLAN Modeling System to Marine Party and Charter Boat Fishing in Maine*. North American Journal of Fisheries Management (August).

PUBLIC REVIEW DRAFT

7.0 Agencies and Individuals Consulted

Dr. Todd Lee
NMFS-AFSC
Sand Point Way
Seattle, WA 98115

Rob Bentz, Brian Frenette
ADFG Sportfish Division
Juneau, Alaska

Scott Meyer
ADFG Sportfish Division
Homer, Alaska

Jay Ginter, John Hale
NMFS SF
P.O. Box 21668
Juneau, AK 99802

Susan Auer, Tom Meyer
NOAA General Counsel
P.O. Box 21109
Juneau, AK

Kim Ott
North Pacific Loan Program
NWFSC
Seattle, WA 98115

LCDR Greg Busch
US Coast Guard
17th Coast Guard District
P.O. Box 25517
Juneau, AK 99802

Jeff Passer
NMFS Enforcement
P.O. Box 21767
Juneau AK 99802

Gregg Williams
International Pacific Halibut Commission
P.O. Box 95009
Seattle, WA 98145-2009

Greg Winegar
Alaska Division of Investments
Dept. of Community & Economic Development
Juneau, AK

Dave Rogers
Alaska Commercial Fishing and Agriculture Bank
2550 Denali Street, Suite 1201
Anchorage, AK 99503-2737

8.0 Preparers

Jane DiCosimo, Chuck Hamel, Maria Tsu, Nicole Kimball, and Darrell Brannan
NPFMC, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501

Contributors

Dr. James E. Wilen
Department of Agricultural and Resource
Economics
University of California-Davis
Davis, CA 95616

Phil Smith, Jessica Gharrett
NMFS Restricted Access Management Division
P.O. Box 21668
Juneau, AK 99802

Dr. Gardner M. Brown
Department of Economics
University of Washington
Seattle, WA 95009

APPENDIX I

Brief Chronology of Charter Halibut Public Record

Brief Chronology of Charter Halibut Public Record

- May 1993: Alaska Longline Fishermen's Assn submits proposal to cap guided sport halibut fisheries. Council put on September 1993 agenda.
- July 1993: Council newsletter (p.8) lists "Proposed Halibut Cap on Charter Operations" as a 'current Council project', initial discussion scheduled for September 1993.
- Sept 1993: Council hears public testimony [Homer Charter Assn submitted a petition w/1,017 names in support to the ALFA proposal] AP recommendation to appoint a workgroup of commercial and sport fishermen to develop recommendations. Council appoints workgroup and announces Control Date of 9/23/93. October 5, 1993 NPFMC Newsletter, p. 3,
- Discussion Paper developed by NPFMC staff for 11/8/93 workgroup meeting.
- Jan 1994: Council receives Workgroup Report; Tasks workgroup to begin development of moratorium options, instead of further consideration of a cap on charter boat catch. NPFMC Newsletter, p. 4.
- Feb 1994: Discussion Paper (2/25) developed by NPFMC staff for 3/20/94 workgroup meeting.
- May 1994: Further discussion of the issue delayed until December 1994. Newsletter, p. 1.
- Jan 1995: Council adopted a draft problem statement and initiated analysis of alternatives, including an explicit allocation of the quota, moratorium on charter vessels, and ITQs. Newsletter, pg. 4-5.
- Jan 1996: Newsletter, p. 7. Council planning to issue RFP for analysis; no action in April, but will mail notice to industry contacts if any further action contemplated at that meeting.
- June 1996: Newsletter, p. 4. Council narrows alternatives; announces issuance of an RFP.
- Feb 1997: Newsletter, p. 5-6. Council reviews draft analysis; initiated analysis of Sitka LAMP proposal.
- April 1997: Newsletter, p. 8. Council reviews revised analysis; delays action until September; included for analysis a proposal by Clem Tillion for a combination of alternatives. Set new control date of April 17, 1997.
- Sept 1997: (In Seattle) Council adopted a recordkeeping and reporting requirement for halibut charterboat industry and GHLS for Areas 2C and 3A. Adopted a framework for developing LAMPS. Newsletter, p. 3.
- Dec 1997: NMFS will not publish GHL as a regulation; Council needs to articulate specific management measures to be implemented if GHL is exceeded. Council appoints new halibut charter committee to provide recommendations on measures to keep from exceeding the GHL. Newsletter, p. 9
- Apr 1998: Council adopted GHL Committee's recommendations for analysis; announced new control date of April 17, 1998. Newsletter, pp 3-4

PUBLIC REVIEW DRAFT

- Apr 1999: Council adopted revised/refined alternatives for analysis. Newsletter, pp. 2-5.
- Dec 1999: Council revises alternatives for analysis. Newsletter, p. 1.
- Feb 2000: Final action on halibut charter GHL and accompanying management measures. Initiated analysis and approved forming a new industry committee to develop elements and options to include halibut charter participants in the current halibut IFQ program. Newsletter, p. 3.
- Apr 2000: Council revises committee recommendations for analysis. Newsletter, p. 4.
- Oct 2000: Council reviewed a preliminary draft of the halibut charter IFQ analysis and revised alternatives. Timeline for initial and final reviews re-scheduled for February and April 2001, respectively. Newsletter, p. 2.
- Dec 2000: Council adopts problem statement for community set-aside; trailing amendment to IFQ amendment, if adopted. Newsletter, p. 4.
- Feb 2001: Council released analysis for public comment, with additional information requests to be included. Newsletter, p. 6

APPENDIX II

Characteristics of the commercial halibut IFQ Program

Quota Share (QS) Characteristics

1. QS allocated or permits issued pursuant to (IFQ regulations at 50 CFR Part 679) do not represent neither an absolute right to the resource or any interest that is subject to the “takings” provision of the Fifth Amendment of the U.S. Constitution. Rather, such QS represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.
2. QS and individual fishing quotas (IFQs) are species, area, and vessel category specific. Halibut QS, other than unblocked QS and large blocks of QS in area 2C, may be fished down (i.e. used on smaller vessels than the designated QS category). IFQs are issued for a fishing year, by species/area/vessel category: $(QS/QS \text{ Area Pool}) * (IFQ \text{ TAC}) = IFQ$.
3. The halibut IFQ management areas are the eight IPHC areas, 2C through 4E. Halibut is allocated to the CDQ program in areas 4B, 4C, 4D, and 4E.
4. QS categories are derived from the size vessels that were used to make qualifying landings for initial issuance of QS. The halibut vessel and QS categories are:
 - A. freezer (processor) vessels
 - B. catcher vessels > 60 feet, and
 - C. catcher vessels > 35 feet and ≤ 60 feet,
 - D. catcher vessels ≤ 35 feet L.O.A.
5. The Regional Administrator shall initially assign to qualified persons halibut fixed-gear fishery QS. A “qualified person” means a “person” that owned or leased a vessel that made legal landings of halibut harvested with fixed gear from any IFQ regulatory area in any QS qualifying year (1988, 1989, or 1990).
6. A person that owned a vessel cannot be a qualified person based on the legal fixed gear landings of halibut by a person who leased the vessel for the duration of the lease (i.e., eligible landings are assigned to the vessel owner OR lessee).

QS/IFQ Allocations

7. The amount of the initial halibut QS for an area assigned to each person will equal the sum of the halibut landings for the person's best five years of eligible landings between 1984 and 1990 for that area.
8. During the qualification period, a vessel is considered to have been a freezer vessel in a given year, if during that year it processed any of its commercial fixed gear groundfish or halibut landings.
9. Each qualified person's QS will be assigned to a vessel category based on the LOA of vessel(s) from which that person made fixed gear legal landings of groundfish or halibut in the most recent year of participation. The most recent year of participation means the most recent year in which any groundfish or halibut were harvested using fixed gear from 1988 through September 25, 1991. All QS will be assigned to the vessel class of the most recent year of participation regardless if qualifying landings were made on a vessel of that size. However, if the owner or lease holder participated in the most recent year using vessels in more than one vessel category, qualifying pounds will be assigned to separate vessel classes in proportion to the landings made with each vessel category.

PUBLIC REVIEW DRAFT

10. Prior to the beginning of each fishing year for the fixed gear halibut fisheries, the fixed gear TACs by area, excluding any TAC that is reserved for community development quotas, will be apportioned to the holders of QS as year, species, area, and vessel category specific IFQs based on the amount of QS held by each person, the QS pool for that species and area (as of January 31), and the IFQ TAC: $(\text{QS}/\text{QS area pool}) * (\text{IFQ TAC}) = \text{annual IFQ (by species, area, category)}$. For example, a person who held 0.1% of the halibut QS for an area would receive 0.1% of the halibut fixed gear TAC for that area excluding any community development quotas.
11. A person's annual IFQ account will be adjusted (increased or decreased) in the year following a determination that the person who used the QS in the previous year over- or under-fished the IFQ derived from that QS. Underages of up to 10% of a person's total annual IFQ account for a current fishing year will be added to an annual IFQ account in the following year. Underages are specific to the species, area, and vessel category for which the IFQ is calculated and will apply to any person to whom the IFQ is allocated in the year following the underage. Overages are specific to species, area, and vessel category. A person's annual account will be adjusted downward the following year if the amount greater than the amount available in an IFQ account does not exceed 10% of the amount available in the account at the time of landing. The adjustment will apply to any person to whom the accreted IFQ is allocated in the year following the determination. *Any overage that exceeds the amount remaining on a permit account by greater than 10% of the amount remaining at the time of a landing is subject to Enforcement penalties and is not administratively adjusted in the following year.*
12. The Regional administrator shall issue to each halibut QS holder an IFQ permit specifying the maximum amount of halibut that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category as of January 31 of each year.

Transfers of QS/IFQ

13. If approved by NMFS, any person holding freezer vessel QS may transfer (sell or lease) those QS to any other person eligible to receive A shares. A person is eligible to receive A shares on NMFS' approval of an Application for Transfer Eligibility Certificate. Approval requires no eligibility criteria such historic commercial fishing participation.
14. If approved by NMFS, a person holding catcher vessel QS may transfer (sell only; leases are prohibited as of 1/1/98) those QS either to any person (individual or non-individual) who is an initial issuee of QS; or to any individual who is an IFQ Crew Member. A individual who was not an initial issuee of QS may become an IFQ Crew Member to receive catcher vessel QS upon NMFS' approval of an Application for Transfer Eligibility Certificate in which they demonstrate they have accrued at least 150 days on the harvesting crew of any U.S. commercial fishery.
15. Halibut catcher vessel QS issued for area 2C must be transferred to an individual person.

QS/IFQ use

16. Halibut QS and IFQs arising from those QS may not be applied to; 1) trawl-caught halibut, or 2) halibut harvested utilizing pots in the Gulf of Alaska, or 3) halibut harvested using pots in the Bering Sea/Aleutian Islands.

PUBLIC REVIEW DRAFT

17. Any individual who harvests halibut with fixed gear must:
 - a. have a valid IFQ card;
 - b. be on board the vessel at all times during the fishing operation;
 - c. sign any required fish ticket;
 - d. sign the IFQ landing report.
18. The exception to the requirement that the card holder is aboard the vessel and sign the IFQ landing report in #14 may be waived in the event of an emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to the IFQ halibut retained on the fishing trip during which such emergency occurred.
19. Any person retaining IFQ halibut with commercial fixed gear must hold (or be a hired master authorized to fish under) an IFQ permit. *(The intent of the Council is to prohibit open access fixed gear fisheries for halibut, and to require that persons in fixed gear fisheries who retain halibut as bycatch must hold or fish under an IFQ or Community Development Quota (CDQ) halibut permit.)*
20. Fish caught with freezer vessel IFQ may be delivered processed or unprocessed (as allowed by IPHC regulations). Fish landed with catcher vessel IFQ may not be frozen or processed in other ways aboard the vessel utilizing that IFQ.
21. For catcher vessel QS, non-individual, and individual initial issuee QS holders may use a hired skipper to fish their IFQ providing that they own at least 20% of the vessel upon which the IFQ will be used. This minimum 20 percent ownership requirement does not apply to any individual who received an initial allocation of catcher vessel and who, prior to April 17, 1997, employed a master to fish their IFQ, provided that the individual continues to own the vessel from which the IFQ is fished at no less percentage than that held on April 17, 1997 and provided that this individual has not acquired additional QS through transfer after September 23, 1997. Additionally, the exemption providing for a hired master does not apply to individuals who receive an initial allocation of catcher vessel halibut QS in area 2C.

For freezer vessel QS, IFQ permit holders may hire a master; but need not own the vessel upon which the IFQ is fished.
22. A corporation or partnership (i.e., non-individual) except for a publicly-held corporation, that receives an initial allocation of catcher vessel QS loses the ability to hire a master on the effective date of change of a “change in the corporation or partnership” from that which existed at the time of initial allocation. A “change in the corporation or partnership” means the addition of any new shareholder(s) or partner(s) except that a court appointed trustee to act on behalf of a shareholder or partner that becomes incapacitated is not a “change”. QS and IFQ held by a corporation or partnership that has “changed” under #16 must be transferred to an individual before it may be used at any time after the effective date of the change. *In the case where ownership of shares is initially allocated to a publicly held corporation, the Council did not make a recommendation regarding what constitutes a change in the corporation.*
23. The Secretary may, by regulation, designate exceptions to the restrictions on who may use catcher vessel IFQ to be employed in case of personal injury or extreme personal emergency which allows the transfer of catcher boat QS/IFQs for limited periods of time. *To date, no such regulations have been promulgated.* However, an existing emergency provision allows waiving the requirement that

PUBLIC REVIEW DRAFT

the IFQ permit holder remain on board to complete an IFQ trip and landing in the event that the permit holder is incapacitated during that trip.

24. Unless the allocation in excess of the following was received in the initial allocation of halibut QS, no person, individually or collectively may use more than:
- a. 1,502,823 units of the total QS units from the combined areas 2C, 3A, and 3B,
 - b. 495,044 units of the total QS from the combined areas 4A, 4B, 4C, 4D, and 4E, or
 - c. 599,799 units of the total QS or IFQ from Area 2C.

The exception is that any person who receives an initial allocation of QS in excess of these limits may continue to use them. However, such a person shall be prohibited from using additional QS or IFQs until that person's QS holdings fall below the limits set forth above, at which time each such person shall be subject to the limitations.

25. No person, individually or collectively, may hold more than two blocks of halibut QS for each IPHC area.
26. No vessel may be used during any one fishing year, to harvest more than:
- a. one-half percent of the combined total catch limits of halibut for all IFQ regulatory areas; or
 - b. in IFQ regulatory 2C, no vessel may be used to harvest more than one percent of the halibut catch limit for this area. *(This differs from the way use caps are aggregated).*
27. In order for the continued prosecution of non-IFQ fixed gear fisheries, the Council suspended the halibut fixed gear Prohibited Species Catch limit.
28. It is prohibited to discard halibut caught with fixed gear from any catcher vessel when any IFQ card holder aboard holds unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating, unless discard of halibut is required in halibut regulations or other provisions.
29. It is prohibited to discard Pacific cod or rockfish that are taken when IFQ halibut are on board, unless Pacific cod or rockfish are required to be discarded by Federal or State of Alaska laws.
30. It is prohibited to possess unprocessed and processed IFQ species on board a vessel during the same trip except when fishing exclusively with IFQ derived from vessel category A QS.
31. It is prohibited to process fish on board a vessel on which a person aboard has unused IFQ derived from QS issued to vessel categories B, C, or D; except that fish other than IFQ halibut or IFQ sablefish may be processed on a vessel on which persons authorized to harvest IFQ based on allocations of IFQ resulting from QS assigned to category A.
32. Surviving spouses of QS holders have special temporary use privileges including the ability to transfer 100% of the IFQ (lease), for a period of 3 full years from the date of the death of the QS holder. *This is planned to change to apply to surviving heirs, regulations are pending.*

IFQ Reporting and recordkeeping

33. Any person that receives IFQ halibut from the person(s) that harvested the fish must possess a registered buyer permit, except in the following conditions; in which a registered buyer permit is required of any such person who harvests and transfers such fish:
- a. in a dockside sale (to individuals for personal consumption);

PUBLIC REVIEW DRAFT

- b. outside of an IFQ regulatory area; or
- c. outside the State of Alaska.

A registered buyer permit also is required of any vessel operator transporting fish on the harvesting vessel outside the State of Alaska.

- 34. Prelanding clearance. A vessel operator who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel from a clearing officer. Prelanding clearance must be obtained prior to the vessel departing the waters of the EEZ adjacent to the State of Alaska, the territorial sea of Alaska, or the internal waters of the State of Alaska.
- 35. Prior Notice of Landing. The operator of any vessel making an IFQ landing must notify NMFS Enforcement, Juneau, no fewer than 6 hours before landing IFQ halibut (or sablefish), unless a waiver is granted by a clearing officer.
- 36. IFQ landing report. A registered buyer must report an IFQ landing within 6 hours after all such fish are landed prior to shipment or departure of the delivery vessel from the landing site. *IFQ landing reports must be filed electronically, unless a waiver to report manually is obtained from NMFS Enforcement.*
- 37. Shipment report. Each registered buyer, other than those conducting dockside sales, must complete a shipment report for each shipment or transfer of IFQ halibut from that registered buyer before the fish leave the landing site. *For dockside sales, a receipt with specified information is required.*
- 38. Transshipment report. A transshipment report is required for any transfer of processed IFQ product to a vessel from the harvesting vessel.
- 39. Depending on circumstances, a Vessel Departure Report and/or Vessel Activity Report also may be required for vessels that have engaged in the IFQ or CDQ halibut fishery.
- 40. Halibut IFQ is measured and debited from accounts, in net weight (head of, gutted) pounds. Permit holders are responsible for managing their accounts. The exception is that limited exception that limited overages will be allowed as specified in an overage program approved by NMFS and the IPHC.
- 41. Halibut tagged under a research program by any state, Federal, or International agency and landed pursuant current Pacific halibut regulations shall not be calculated as part of an individual's IFQ harvest, nor debited against an individual's halibut IFQ.
- 42. Persons holding IFQ may utilize those privileges at any time during designated seasons. Retention of halibut is prohibited during closed seasons. Seasons will be identified by the IPHC on an annual basis. *(The halibut IFQ season has opened on March 15 and closed on November 15 since the inception of the program in 1995.)*

IFQ Cost Recovery program

Starting in 2000, IFQ permit holders are responsible for paying fees to NMFS to cover the costs of management and enforcement of the IFQ program. Fees are levied as a percentage, not to exceed 3%, of the ex-vessel value of IFQ landings on permits.

CDQ Halibut

44. The Western Alaska CDQ Program is established to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands halibut fisheries, to expand their participation in salmon, herring, and other near shore fisheries, and to help alleviate the growing social economic crisis within these communities.

The NMFS Regional Director shall hold the designated percentage of the annual fixed gear TAC of halibut for each management area in the Bering Sea and Aleutian Islands for the western Alaska community development quota program. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use.

45. The designated percentages are as follows:
- a. 100% of the area 4E halibut quota,
 - b. 50% of the area 4C halibut quota
 - c. 20% of the area 4B halibut quota, and
 - d. 30% of the area 4D halibut quota.
46. Persons who receive QS in the CDQ areas 4B - 4E are partially compensated with increased QS in non-CDQ areas, 2C - 4A. The mechanism for doing this is intended to proportionately share the cost of the CDQ program among all initial QS recipients.

APPENDIX III

Description and Application of Available Data Sources

Alaska Department of Fish and Game Saltwater Sportfishing Charter Vessel Logbook (adapted from ADFG Special Publication 99-1).

In February 1998, the Board of Fish adopted regulations requiring logbooks for saltwater charter vessels statewide. The ADFG logbook program compiles individual vessel-based sport charter information including effort and harvest data as required to be reported by the operator onboard the vessel. By 1999, ADFG began adding a “checkout” sheet to each logbook for easier tracking of business, owner, and vessel information.

Among the variables included in the logbook database are fields for the primary area fished, number of boat hours fished and rods utilized for either bottomfish or salmon. Also included are numbers of fish caught by client residency and crew (both kept and released) for halibut, rockfish, lingcod, and various salmon species.

Problems: For 1998, logbook records do not identify the individuals (owner/operators, owners who hire skippers, bare vessel lessees, and hired skippers) associated with the vessel whose participation is documented. To the extent possible such information relating to participants needs to be cross-referenced with additional data sets such as CFEC vessel registration files, IPHC license data, and ADFG guide and business registration files.

Application: Logbook data identifies vessels and reports respective catch and harvests. Individuals associated with these vessels in whichever capacity the Council chooses (owner/operators, owners who hire skippers, bare vessel lessees, and hired skippers) then become the qualified ‘operators’ under Issue 3, to the extent that they meet the requirements under Issue 3’s set of options. The logbook data on its own cannot identify these individuals, and instead must be cross-referenced by vessel ADFG number to the data sources that follow.

Commercial Fisheries Entry Commission Vessel Registration

The CFEC vessel registration files for all years are available to the public through the CFEC website on the Internet, as column delimited ASCII files. These include information about the vessel characteristics, the fisheries in which the vessel is engaged, and flags for charter, fishing, freezing/canning, or tendering/packing activities.

Problems: Although vessels used for guided sport fishing are required to have CFEC vessel licenses, there is no requirement to mark the “charter” category of activity. Therefore, when cross-checking data from other sources with the CFEC vessel registration file, all vessels (and not just those marked for the “charter” activity) must be included for consideration. Also, owner names may appear as business names, and in either case, these may be reported differently from year to year. For example, a person by the name of Joe Charter Guy could appear as J. C. Guy or Joe C. Guy in subsequent years, making it difficult to track individuals.

Application: CFEC registration files for 1995 through 1997 are required under the qualification criteria in Issue 3. CFEC registration files also provide the link to owner names for the vessels in the logbook data. Though CFEC data will allow us to identify the unique vessel owners who have registered their boats, they do not convey information as to whether the owners acted as operators. It should be noted that the names of persons other than the owner that register a boat with CFEC are not recorded in the file - in other words, hired skippers or bare vessel lessees who register vessels on behalf of the boat owners do not appear in the data set if they filled in the owners name on the entry form. At the same time there is no mechanism at CFEC to verify whether a name that is entered as the owner name does in fact correspond to the vessel owner, so to the extent that non-owner applicants mistakenly enter their own names on the application form, the CFEC registration file may sometimes erroneously identify bare vessel lessees or hired skippers as owners. NMFS

RAM has reported that a significant number of instances of mistaken identity were discovered during implementation of the halibut and sablefish IFQ program (Jessica Gharret, pers. comm.).

International Pacific Halibut Commission Halibut License File

The IPHC license, issued from 1994 through 1997, was required annually for all sport charter and commercial harvesters, and was issued at no charge to the vessel (rather than to a person) in the name of the vessel owner or operator. The IPHC license number assigned to a vessel fishing in Alaska waters is the same as the USCG documentation number or registration number. The applicant is required to indicate one of the following activity codes – “commercial,” “sport charter,” or “both.”

The data collected on the license application is available electronically each year. In addition to the activity code, it includes the following information: vessel name, vessel number, length, tonnage, year built, crew size, and homeport. Additional information includes the name and address of the captain, the name and address of the owner (if different from the captain), state vessel registration number (generally the CFEC number), and type of gear used. The IPHC discontinued its licensing of Alaska sport charter vessels in 1998 and currently relies on data collected through ADFG’s Logbook Program to monitor this fishery.

Problems: Some vessels registered in Alaska are homeported outside the state, and some vessels homeported within Alaska are captained or owned by persons with a residence outside Alaska. The address of the owner might be Alaskan when in fact that is only the seasonal address for a non-resident. The homeport is not always the location fished. For example, a number of vessels are homeported in Anchorage and Fairbanks. Tracking vessel owners and captains over time is complicated by the fact that individuals’ names change or the way they are reported changes from year to year. The same problems that apply to

Other problems noted in the Council’s 1997 GHF analysis pertain to the potential for strategic response bias. Potential guided charter operators may have applied for a license to attempt to ensure that they receive an allocation under a quota system or be included in a moratorium. Some commercial fishermen may have speculatively checked the sport category box to be included under any future moratorium or legitimately checked the box because of an intent to operate in the halibut charter boat fishery. These problems are not necessarily limited to IPHC licensing, and may be pervasive in each of the data sets presented.

Application: IPHC license files for 1995 through 1997 are required under the qualification criteria in Issue 3. This data set will be of some value in allowing us to determine whether owners operated the licensed vessels because of the separate fields in the application form for “Owner” and “Captain if different from owner.” In other words, staff may be able to distinguish which of the vessel owners are owner non-operators and to the extent that the forms were correctly filled out, who some of the hired skippers are as well. However, this will only be true through 1997 since the program was discontinued thereafter..

Alaska Department of Fish and Game Guide and Business Registration File (Excerpted from ADFG Special Publication 99-1)

Beginning in May 1995 and continuing in 1996, the owner(s) of a business that engaged in guiding anglers anywhere in Alaska was required to register annually with ADFG. Additionally, any employee acting as a sportfishing guide for a business was required to register before conducting guiding activities. In 1997 sportfishing guides were required to register and provide information about the employing business and to register their vessels. If a guide changed employers during the 1997 season, the registration information had to be updated. However, from 1998 onward ADFG no longer collected information on sportfish guides’ employers and likewise stopped registering charter vessels, because CFEC implemented a licensing program

for all vessels to be used for sportfishing. This file may be helpful for identifying the participation of some hired skippers, as well as identifying persons who may have owned charterboats operated by hired individuals.

Application: Though not a mandatory source of documentation for purposes of the charter IFQ qualification criteria under Issue 3, guide and business registrations will be useful for identifying the names of owners whose business names are listed for vessels in the CFEC vessel registration file. Guides who appear independently of a business would presumably be hired skippers; however, only in 1997 did the application form include fields for linking an independent guide to the business he or she worked for or the vessel operated. This precludes us from being able to assign harvests from the 1998 and 1999 logbooks to individuals other than owners. Depending on the type of 'operator' selected under Issue 4 (i.e. owner-operators, skippers, bare-vessel lessees, etc.), this data set will help to track the documented histories of potential qualifiers. Again, because links that relate a particular guide or business to the vessel he or she fished are non-existent for several years under the time period considered, this database will only be partly useful, and will not allow us to track the participation of all operators.

In summary, the available data will only allow us to fully identify the owners of vessels which 'participated' between 1995 and 1999, but will not necessarily allow us to make the distinction of their participation as owner /operators versus owners who hired skippers or leased their vessels. In some cases up until 1997, staff can identify owner operators (versus owners who hired skippers or leased their boats) and some hired skippers, but will have trouble linking their participation to harvest histories in 1998 and 1999. In no case will staff be able to make a determination as to how many individuals participated as bare vessel lessees, either as operators or non-operators. Table 2 depicts the data sources described above, the years of applicability, and the types of participants identified. It should be noted that the data sets listed in Table 2 do not necessarily identify the relevant individuals in terms of the categories listed in Issue 4.

PUBLIC REVIEW DRAFT

Table 2 Available data sources for enumerating quota share recipients and their caveats

| Data Source | Mandatory Qualification Criteria? | Years of Data Availability | | | | | Types of Participants Included in Data Set ¹ | | | |
|---|-----------------------------------|----------------------------|----|----------------|----|----|---|----------------|----------------|----------------|
| | | 95 | 96 | 97 | 98 | 99 | Vessels | Vessel Owner | Captain | Lessee |
| ADFG Logbook | Yes | | | | X | X | X | | | |
| CFEC Vessel Registration File | Yes | X | X | X | X | X | X | X | | |
| IPHC License File | Yes | X | X | X | | | X | X | X | |
| ADFG Sportfishing Guide and Business Registration | No | X | X | X ² | X | X | | X ³ | X ⁴ | X ⁵ |

¹ While these types of participants may be included in the data, they are not necessarily identifiable by participant category.

² Only the 1997 Guide and Business registration data set include vessel information and employer fields for guides who are hired as skippers, making it much more difficult to link non-owner guides to vessels and businesses for other years.

³ The 'Business Owner' is required to register, and this may be the vessel owner or a lessee who controls the vessel's activity or operates the vessel herself.

⁴ Though persons registering as only guides and not business owners could presumably be identified as hired skippers, staff only know the businesses (employers) and vessels they were affiliated with for 1997.

⁵ Bare vessel lessees are required to register their businesses **and** to register themselves as guides if they are skippering a vessel. Again, staff can only trace back affiliation to a particular vessel for 1997.

APPENDIX IV

**Community “Set Aside” of Halibut Charter Individual Fishing Quota Shares Discussion Paper
May 30, 2000**